

TASMANIA

**POLICE POWERS (CONTROLLED OPERATIONS)
BILL 2006**

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Purposes of Act
4. Interpretation
5. Meaning of reckless
6. Act binds Crown
7. Relationship to other laws and matters
8. Controlled operation taken to be conducted in this jurisdiction

PART 2 – AUTHORISATION OF CONTROLLED OPERATIONS

9. Applications for authorities to conduct controlled operations
10. Determination of applications
11. Form of authority
12. Duration of authorities
13. Variation of authority
14. Form of variation of authority
15. Cancellation of authorities
16. Effect of authorities
17. Defect in authority

PART 3 – CONDUCT OF CROSS-BORDER CONTROLLED OPERATIONS

Division 1 – Controlled conduct engaged in for purposes of controlled operations authorised by Part 2

18. Protection from criminal responsibility for controlled conduct during authorised operations
19. Indemnification of participants against civil liability
20. Effect of sections 18 and 19 on other laws relating to criminal investigation
21. Effect of being unaware of variation or cancellation of authority
22. Protection from criminal responsibility for certain ancillary conduct

Division 2 – Compensation and notification of third parties

23. Compensation for property loss or serious damage
24. Notification requirements

Division 3 – Mutual recognition

25. Mutual recognition of corresponding authorities

PART 4 – COMPLIANCE AND MONITORING

Division 1 – Restrictions on use, communication and publication of information

26. Unauthorised disclosure of information

Division 2 – Reporting and record-keeping

27. Principal law enforcement officers' reports
28. Chief officers' annual reports
29. Keeping documents connected with authorised operations
30. General register

Division 3 – Inspections

31. Inspection entity
32. Inspection of records by inspection entity

PART 5 – MISCELLANEOUS

33. Evidence of authorities
34. Delegation

35. Regulations
36. Administration of Act

**POLICE POWERS (CONTROLLED OPERATIONS)
BILL 2006**

*(Brought in by the Minister for Justice and Workplace
Relations, the Honourable Steven Kons)*

A BILL FOR

**An Act to provide for the authorisation, conduct and
monitoring of controlled operations and for other matters**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Police Powers
(Controlled Operations) Act 2006*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Purposes of Act

The main purposes of this Act are –

- (a) to provide for the authorisation, conduct
and monitoring of controlled operations,
including operations conducted in this or

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 3

Part 1 – Preliminary

this and one or more other jurisdictions or in one or more participating jurisdictions –

- (i) for the purpose of obtaining evidence that may lead to the prosecution of persons for particular offences; and
 - (ii) that involve or may involve conduct for which participants in the operation would otherwise be criminally responsible; and
- (b) to facilitate mutual recognition of things done in relation to controlled operations authorised under laws of other jurisdictions corresponding to this Act; and
 - (c) to ensure, as far as practicable, that only appropriately trained persons may act as participants in authorised operations; and
 - (d) to ensure that a person who may act as a participant in an authorised operation engages in otherwise unlawful activities only as part of the authorised operation; and
 - (e) to provide appropriate protection from civil and criminal liability for persons acting under this Act; and
 - (f) to clarify the status of evidence obtained by participants in authorised operations.

4. Interpretation

In this Act, unless the contrary intention appears –

“Australian Crime Commission” means the Australian Crime Commission established by the *Australian Crime Commission Act 2002* of the Commonwealth;

“authorised operation” means a controlled operation for which an authority is in force;

“authority” means an authority in force under Part 2, and includes any variation of such an authority;

“chief officer” means the person for the time being holding office as –

- (a) in relation to the Police Service, the Commissioner of Police; or
- (b) in relation to the Australian Crime Commission, the Chief Executive Officer of the Australian Crime Commission;

“civilian participant”, in an authorised operation, means a participant in the operation who is not a law enforcement officer;

“conduct” includes any act or omission;

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 4

Part 1 – Preliminary

“controlled conduct” means conduct for which a person would, but for section 18 or 25, be criminally responsible;

“controlled operation” means an operation that –

- (a) is conducted, or is intended to be conducted, for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence; and
- (b) involves, or may involve, controlled conduct;

“corresponding authorised operation” means any operation in the nature of a controlled operation that is authorised by or under the provisions of a corresponding law;

“corresponding authority” means an authority authorising a controlled operation (within the meaning of a corresponding law) that is in force under the corresponding law;

“corresponding law” means a law of another jurisdiction that corresponds to this Act, and includes a law of another jurisdiction that is declared by the regulations to correspond to this Act;

“corresponding participant” means a person who is authorised by a corresponding

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 1 – Preliminary

s. 4

authority to participate in a corresponding authorised operation;

“criminal activity” means conduct that involves the commission of an offence by one or more persons;

“function” includes a power, authority or duty;

“formal application” – see section 9(2)(a);

“formal authority” – see section 11(1)(a);

“formal variation application” – see section 13(5)(a);

“formal variation of authority” – see section 13(10)(a);

“illicit goods” means goods the possession of which is a contravention of the law of this jurisdiction;

“inspection entity” means the person appointed and holding office under section 31;

“jurisdiction” means a State or Territory of the Commonwealth;

“law enforcement agency” means –

(a) the Police Service; or

(b) the Australian Crime Commission;

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 4

Part 1 – Preliminary

“law enforcement officer” means –

- (a) in relation to the Police Service, a police officer; and
- (b) in relation to the Australian Crime Commission, a member of staff of the Australian Crime Commission –

and includes a person who is seconded to a law enforcement agency, including (but not limited to) a member of the police force or police service, and a police officer (however described), of another jurisdiction;

“law enforcement participant”, in an authorised operation, means a participant in the operation who is a law enforcement officer;

“participant”, in an authorised operation, means a person who is authorised under this Act to engage in controlled conduct for the purposes of the operation;

“participating jurisdiction” means a jurisdiction in which a corresponding law is in force;

“principal law enforcement officer”, for an authorised operation, means the law enforcement officer who is responsible for the conduct of the operation;

“relevant offence” means –

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 1 – Preliminary

s. 5

- (a) an offence against the law of this jurisdiction punishable by a maximum term of imprisonment of 3 years or more; or
- (b) an offence against the law of this jurisdiction that is prescribed by the regulations;

“suspect” means a person reasonably suspected of having committed or being likely to have committed, or of committing or being likely to commit, a relevant offence;

“this jurisdiction” means Tasmania;

“urgent application” – see section 9(2)(b);

“urgent authority” – see section 11(1)(b);

“urgent variation application” – see section 13(5)(b);

“urgent variation of authority” – see section 13(10)(b).

5. Meaning of reckless

- (1) A person is “reckless” in relation to a circumstance if –
 - (a) the person is aware of a substantial risk that the circumstance exists or will exist; and

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 6

Part 1 – Preliminary

- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2) A person is “reckless” in relation to a result if –
- (a) the person is aware of a substantial risk that the result will happen; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (3) It is a question of fact as to whether taking a risk is unjustifiable.

6. Act binds Crown

- (1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.
- (2) Nothing in this Act makes the Crown liable to be prosecuted for an offence.

7. Relationship to other laws and matters

- (1) This Act is not intended to affect any law of this jurisdiction that authorises, controls or monitors the conduct of operations wholly within this jurisdiction –
 - (a) that are for the purpose of obtaining evidence that may lead to the prosecution of a person for an offence; and

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 1 – Preliminary

s. 7

- (b) that involve, or may involve, conduct for which participants in the operation would otherwise be criminally responsible.
- (2) This Act is not intended to affect the investigation of minor matters or investigative activities in Tasmania that, by their nature, may involve the participation of law enforcement officers in activities that may be unlawful.
- (3) Subject to subsections (1) and (2), a controlled operation may be approved only under this Act.
- (4) The Commissioner of Police may issue guidelines to police officers relating to the conduct of investigations or activities referred to in subsection (2).
- (5) A function conferred in relation to the activities of the Australian Crime Commission under this Act is only conferred for the purpose of the function conferred on the Australian Crime Commission under the *Australian Crime Commission (Tasmania) Act 2004* relating to suspected serious and organised crime as defined under that Act.
- (6) Subject to subsection (7), this Act is not intended to limit a discretion that a court has –
 - (a) to admit or exclude evidence in any proceedings; or
 - (b) to stay criminal proceedings in the interests of justice.

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 8

Part 1 – Preliminary

- (7) In determining whether evidence should be admitted or excluded in any proceedings, the fact that the evidence was obtained as a result of a person engaging in criminal activity is to be disregarded if –
- (a) the person was a participant or corresponding participant acting in the course of an authorised operation or corresponding authorised operation; and
 - (b) the criminal activity was controlled conduct within the meaning of this Act or controlled conduct within the meaning of a corresponding law.
- (8) The following Acts do not apply to investigations, operations, activities and records under this Act:
- (a) the *Archives Act 1983*;
 - (b) the *Freedom of Information Act 1991*;
 - (c) the *Personal Information Protection Act 2004*.

8. Controlled operation taken to be conducted in this jurisdiction

For the purposes of this Act, a controlled operation in relation to a relevant offence is taken to be conducted in this jurisdiction, whether or not it is also conducted in another jurisdiction, if a participant in the operation is a law enforcement officer of this jurisdiction.

PART 2 – AUTHORISATION OF CONTROLLED OPERATIONS

9. Applications for authorities to conduct controlled operations

- (1) A law enforcement officer of a law enforcement agency may apply to the chief officer of the agency for authority to conduct a controlled operation on behalf of the agency.
- (2) An application for an authority may be made –
 - (a) by means of a written document signed by the applicant (a “*formal application*”); or
 - (b) if the applicant has reason to believe that the delay caused by making a formal application may affect the success of the operation, orally in person or by telephone, fax, email or any other means of communication (an “*urgent application*”).
- (3) Nothing in this Part prevents an application for an authority being made in respect of a controlled operation that has been the subject of a previous application.
- (4) In any application, whether formal or urgent, the applicant must –
 - (a) provide sufficient information to enable the chief officer to decide whether or not to grant the application; and

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 10

Part 2 – Authorisation of Controlled Operations

- (b) state whether or not the proposed operation, or any other controlled operation in respect of the same criminal activity, has been the subject of an earlier application for an authority or variation of an authority and, if so, whether or not the authority or variation was granted.
- (5) The chief officer may require the applicant to furnish such additional information concerning the proposed controlled operation as is necessary for the chief officer's proper consideration of the application.
- (6) As soon as practicable after making an urgent application, the applicant must make a record in writing of the application and give a copy of it to the chief officer.

10. Determination of applications

- (1) After considering an application for authority to conduct a controlled operation, and any additional information furnished under section 9(5), the chief officer –
 - (a) may authorise the operation by granting the authority, either unconditionally or subject to conditions; or
 - (b) may refuse the application.
- (2) An authority to conduct a controlled operation may not be granted unless the chief officer is satisfied on reasonable grounds –

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 2 – Authorisation of Controlled Operations

s. 10

- (a) that a relevant offence has been, is being or is likely to be committed; and
- (b) that the controlled operation will be, or is likely to be, conducted in this jurisdiction, in this and one or more other jurisdictions or in one or more participating jurisdictions; and
- (c) that the nature and extent of the suspected criminal activity are such as to justify the conduct of a controlled operation in this jurisdiction, in this and one or more other jurisdictions or in one or more participating jurisdictions; and
- (d) that any unlawful conduct involved in conducting the operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and
- (e) that the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of persons, other than law enforcement officers, at the end of the operation than are reasonably necessary to enable the officers to achieve the purpose of the controlled operation; and
- (f) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the reporting requirements of Part 4 to be complied with; and

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 11

Part 2 – Authorisation of Controlled Operations

- (g) that the operation will not be conducted in such a way that a person is likely to be induced to commit an offence against a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and
- (h) that any conduct involved in the operation will not –
 - (i) seriously endanger the health or safety of any person; or
 - (ii) cause the death of, or serious injury to, any person; or
 - (iii) involve the commission of a sexual offence against any person; or
 - (iv) result in unlawful loss of or serious damage to property (other than illicit goods); and
- (i) that any role assigned to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer.

11. Form of authority

- (1) An authority to conduct a controlled operation may be granted –

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 2 – Authorisation of Controlled Operations

s. 11

- (a) by means of a written document, signed by the chief officer (a “*formal authority*”); or
 - (b) if the chief officer is satisfied that the delay caused by granting a formal authority may affect the success of the operation, orally in person or by telephone, fax, email or any other means of communication (an “*urgent authority*”).
- (2) Nothing in this Part prevents an authority being granted in respect of a controlled operation that has been the subject of a previous authority.
- (3) An authority, whether formal or urgent, must –
- (a) state the name and rank or position of the person granting the authority; and
 - (b) identify the principal law enforcement officer and, if the principal law enforcement officer is not the applicant for the authority, the name of the applicant; and
 - (c) state whether the application is a formal application or an urgent application; and
 - (d) identify each person who may engage in controlled conduct for the purposes of the controlled operation; and
 - (e) state the participating jurisdictions in which the controlled conduct is, or is likely, to be engaged in; and

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 11

Part 2 – Authorisation of Controlled Operations

- (f) identify the nature of the criminal activity (including the suspected relevant offences) in respect of which the controlled conduct is to be engaged in; and
- (g) identify –
 - (i) with respect to the law enforcement participants, the nature of the controlled conduct that those participants may engage in; and
 - (ii) with respect to the civilian participants, the particular controlled conduct (if any) that each such participant may engage in; and
- (h) identify (to the extent known) any suspect; and
- (i) specify the period of validity of the authority, being a period not exceeding 3 months in the case of a formal authority or 7 days in the case of an urgent authority; and
- (j) specify any conditions to which the conduct of the operation is subject; and
- (k) state the date and time when the authority is granted; and
- (l) identify (to the extent known) –

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 2 – Authorisation of Controlled Operations

s. 12

- (i) the nature and quantity of any illicit goods that will be involved in the operation; and
 - (ii) the route through which those goods will pass in the course of the operation.
- (4) A person is sufficiently identified for the purposes of subsection (3)(d) if the person is identified –
- (a) by an assumed name under which the person is operating; or
 - (b) by a code name or code number –
- so long as the assumed name, code name or code number can be matched to the person’s identity.
- (5) The chief officer must ensure that written notes are kept of the particulars referred to in subsection (3) for each urgent authority.

12. Duration of authorities

Unless it is sooner cancelled, an authority has effect for the period of validity specified in it in accordance with section 11(3)(i).

13. Variation of authority

- (1) The chief officer may vary an authority –

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 13

Part 2 – Authorisation of Controlled Operations

- (a) at any time on the chief officer's own initiative; or
 - (b) on application under subsection (3).
- (2) However, a variation cannot be made that has the effect of extending the period of validity of an urgent authority.
- (3) The principal law enforcement officer for an authorised operation, or any other law enforcement officer on behalf of the principal law enforcement officer, may apply to the chief officer for a variation of authority for any one or more of the following purposes:
 - (a) to extend the period of validity of the authority (except as provided by subsection (2));
 - (b) to authorise additional or alternative persons to engage in controlled conduct for the purposes of the operation;
 - (c) to authorise participants in the operation to engage in additional or alternative controlled conduct;
 - (d) to identify additional suspects (to the extent known).
- (4) More than one application for a variation may be made in respect of the same authority, but no single variation may extend the period of validity of an authority for more than 3 months at a time.

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 2 – Authorisation of Controlled Operations

s. 13

-
- (5) An application for a variation of an authority may be made –
- (a) by means of a written document that is signed by the applicant (a “*formal variation application*”); or
 - (b) if the applicant has reason to believe that the delay caused by making a formal variation application may affect the success of the operation, orally in person or by telephone, fax, email or any other means of communication (an “*urgent variation application*”).
- (6) The chief officer may require the applicant to furnish such information concerning the proposed variation as is necessary for the chief officer’s proper consideration of the application.
- (7) After considering an application for a variation of authority, and any additional information furnished under subsection (6), the chief officer –
- (a) may vary the authority in accordance with the application, either unconditionally or subject to conditions; or
 - (b) may refuse the application.
- (8) Section 10(2) applies to an application for a variation of authority under this section in the same way as it applies to an application for authority under section 10(1).

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 13

Part 2 – Authorisation of Controlled Operations

- (9) Without limiting subsection (8), a variation of authority may not be granted unless the chief officer is satisfied on reasonable grounds that the variation will not authorise a significant alteration of the nature of the authorised operation concerned.
- (10) A variation of authority may be granted only –
- (a) by means of a written document signed by the chief officer (a “*formal variation of authority*”); or
 - (b) if the person granting the variation is satisfied that the delay caused by granting a formal variation of authority may affect the success of the operation, orally in person or by telephone, fax, email or any other means of communication (an “*urgent variation of authority*”).
- (11) The chief officer –
- (a) must ensure that written notes are kept of the following matters:
 - (i) the date and time when the variation of authority was granted;
 - (ii) the identity of the law enforcement officer to whom the variation of authority was granted;

- (iii) particulars of the variations to the original authority that are approved under this section; and
- (b) must, as soon as practicable, prepare and give to the applicant a written document that complies with section 14.

14. Form of variation of authority

A variation of authority must –

- (a) identify the authorised operation for which the authority is in force; and
- (b) state the name, and rank or position, of the person granting the variation of authority; and
- (c) if the application for the variation is made under section 13(3), state the name of the applicant; and
- (d) state whether the application is a formal variation application or was an urgent variation application; and
- (e) state the date and time when the variation of authority is or was granted; and
- (f) describe the variation having regard to the purposes referred to in section 13(3) in respect of which the application was made.

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 15

Part 2 – Authorisation of Controlled Operations

15. Cancellation of authorities

- (1) The chief officer may, by order in writing given to the principal law enforcement officer for an authorised operation, cancel the authority at any time and for any reason.
- (2) Without limiting subsection (1), the chief officer may cancel an authority for an authorised operation at any time at the request of the principal law enforcement officer for the operation.
- (3) Cancellation of an authority for a controlled operation takes effect at the time when the order is made or at the later time specified in the order.

16. Effect of authorities

- (1) While it has effect, an authority for a controlled operation –
 - (a) authorises each law enforcement participant to engage in the controlled conduct specified in the authority in respect of the law enforcement participants; and
 - (b) authorises each civilian participant (if any) to engage in the particular controlled conduct (if any) specified in the authority in respect of that participant; and
 - (c) authorises each participant to engage in that conduct in this jurisdiction or any

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 2 – Authorisation of Controlled Operations

s. 17

participating jurisdiction (subject to any corresponding law of that participating jurisdiction).

- (2) The authority to engage in controlled conduct given to a participant cannot be delegated to any other person.

17. Defect in authority

An application for authority or variation of authority, and any authority or variation of authority granted on the basis of such an application, is not invalidated by any defect, other than a defect that affects the application, authority or variation in a material particular.

**PART 3 – CONDUCT OF CROSS-BORDER
CONTROLLED OPERATIONS**

*Division 1 – Controlled conduct engaged in for purposes of
controlled operations authorised by Part 2*

**18. Protection from criminal responsibility for
controlled conduct during authorised operations**

Despite any other Act or law of this jurisdiction, a participant who engages in conduct (whether in this jurisdiction or elsewhere) in an authorised operation in the course of, and for the purposes of, the operation is not, if engaging in that conduct is an offence, criminally responsible for the offence if –

- (a) the conduct is authorised by, and is engaged in accordance with, the authority for the operation; and
- (b) the conduct does not involve the participant intentionally inducing a person to commit an offence under a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and
- (c) the conduct does not involve the participant engaging in any conduct that is likely to –
 - (i) cause the death of, or serious injury to, any person; or

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 3 – Conduct of Cross-border Controlled Operations

s. 19

- (ii) involve the commission of a sexual offence against any person; and
- (d) if the participant is a civilian participant, he or she acts in accordance with the instructions of a law enforcement officer.

19. Indemnification of participants against civil liability

- (1) This section applies to a law enforcement agency if a controlled operation has been authorised by the chief officer of the agency under section 10.
- (2) The law enforcement agency must indemnify a participant in the authorised operation against any civil liability (including reasonable costs) that the participant incurs because of conduct that the participant engages in if –
 - (a) the participant engages in the conduct in the course of, and for the purposes of, the operation in accordance with the authority for the operation; and
 - (b) the conduct does not involve the participant intentionally inducing a person to commit an offence under a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and
 - (c) the conduct does not involve the participant engaging in any conduct that is likely to –

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 20

Part 3 – Conduct of Cross-border Controlled Operations

- (i) cause the death of, or serious injury to, any person; or
- (ii) involve the commission of a sexual offence against any person; and
- (d) if the participant is a civilian participant, he or she acts in accordance with the instructions of a law enforcement officer; and
- (e) the requirements (if any) specified in the regulations have been met.

20. Effect of sections 18 and 19 on other laws relating to criminal investigation

Sections 18 and 19 do not apply to a person's conduct that is, or could have been, authorised under a law of this jurisdiction relating to the following:

- (a) arrest or detention of individuals;
- (b) searches of individuals;
- (c) entry onto, or searches or inspection of, premises;
- (d) searches, inspections or seizures of other property;
- (e) forensic procedures;

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 3 – Conduct of Cross-border Controlled Operations

s. 21

- (f) electronic surveillance devices or telecommunications interception;
- (g) identification procedures;
- (h) the acquisition or use of assumed identities;
- (i) any other matter concerning powers of criminal investigation.

21. Effect of being unaware of variation or cancellation of authority

- (1) If an authority for a controlled operation is varied in a way that limits its scope, this Part continues to apply to a participant in the operation as if the authority had not been varied in that way, for so long as the participant –
 - (a) is unaware of the variation; and
 - (b) is not reckless about the existence of the variation.
- (2) If an authority for a controlled operation is cancelled, this Part continues to apply to a participant in the operation as if the authority had not been cancelled, for so long as the participant –
 - (a) is unaware of the cancellation; and
 - (b) is not reckless about the existence of the cancellation.

22. Protection from criminal responsibility for certain ancillary conduct

- (1) This section applies to conduct such as aiding and abetting the commission of an offence or of conspiring to commit an offence (“*ancillary conduct*”) for which a person may be criminally responsible because it involves conduct engaged in by another person that is controlled conduct for which the other person would (but for section 18) be criminally responsible (the “*related controlled conduct*”).
- (2) Despite any other Act or law of this jurisdiction, a person who engages in ancillary conduct that is an offence (whether or not the person is a participant in a controlled operation) is not criminally responsible for the offence if at the time the person engaged in the ancillary conduct he or she believed the related controlled conduct was being engaged in, or would be engaged in, by a participant in an authorised operation.

Division 2 – Compensation and notification of third parties

23. Compensation for property loss or serious damage

- (1) If a person suffers loss of or serious damage to property as a direct result of an authorised operation conducted by the Police Service, the State is liable to pay to the person compensation as agreed between the State and the person or, in default of agreement, as determined by action against the State in a court of competent jurisdiction.

Police Powers (Controlled Operations) Act 2006
Act No. of

- (2) Subsection (1) does not apply if –
- (a) the person suffered the loss or damage in the course of, or as a direct result of, engaging in any criminal activity (other than criminal activity that is controlled conduct); or
 - (b) the person was a law enforcement officer involved in the authorised operation at the time of suffering the loss or damage.

24. Notification requirements

- (1) If any loss of or serious damage to property occurs in the course of or as a direct result of an authorised operation (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation), the principal law enforcement officer for the operation must report the loss or damage to the chief officer of the law enforcement agency as soon as practicable.
- (2) The chief officer must take all reasonable steps to notify the owner of the property of the loss or damage.
- (3) The chief officer is not required to notify the owner of property under this section until the chief officer is satisfied that notification would not –
 - (a) compromise or hinder the authorised operation; or

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 25

Part 3 – Conduct of Cross-border Controlled Operations

- (b) compromise the identity of a participant in the authorised operation; or
- (c) endanger the life or safety of any person; or
- (d) prejudice any legal proceedings; or
- (e) otherwise be contrary to the public interest.

Division 3 – Mutual recognition

25. Mutual recognition of corresponding authorities

The following provisions apply, with any necessary changes, to a corresponding authority under a corresponding law, and to a corresponding authorised operation under that law, as if the corresponding authority were an authority given under section 10:

- (a) section 16 (Effect of authorities);
- (b) section 17 (Defect in authority);
- (c) section 18 (Protection from criminal responsibility for controlled conduct during authorised operations);
- (d) section 19 (Indemnification of participants against civil liability);
- (e) section 20 (Effect of sections 18 and 19 on other laws relating to criminal investigation);

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 3 – Conduct of Cross-border Controlled Operations

s. 25

- (f) section 21 (Effect of being unaware of variation or cancellation of authority);
- (g) section 22 (Protection from criminal responsibility for certain ancillary conduct).

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 26

Part 4 – Compliance and Monitoring

PART 4 – COMPLIANCE AND MONITORING

Division 1 – Restrictions on use, communication and publication of information

26. Unauthorised disclosure of information

(1) A person is guilty of an offence if –

- (a) the person intentionally, knowingly or recklessly discloses any information; and
- (b) the person knows that, or is reckless as to whether, the information relates to an authorised operation or a corresponding authorised operation; and
- (c) the person knows that, or is reckless as to whether, the disclosure is not made –
 - (i) in connection with the administration or execution of this Act or a corresponding law; or
 - (ii) for the purposes of any legal proceeding arising out of or otherwise related to this Act or a corresponding law or of any report of any such proceedings; or
 - (iii) in accordance with any requirement imposed by law.

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 4 – Compliance and Monitoring

s. 27

Penalty: Imprisonment for a term not exceeding 2 years.

- (2) A person is guilty of an offence against this subsection if the person commits an offence against subsection (1) in circumstances in which the person –
- (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an authorised operation or a corresponding authorised operation; or
 - (b) knows that, or is reckless as to whether, the disclosure of the information –
 - (i) endangers or will endanger the health or safety of any person; or
 - (ii) prejudices or will prejudice the effective conduct of an authorised operation or a corresponding authorised operation.

Penalty: Imprisonment for a term not exceeding 10 years.

Division 2 – Reporting and record-keeping

27. Principal law enforcement officers' reports

- (1) Within 2 months after the completion of an authorised operation, the principal law enforcement officer for the operation must make a report in accordance with this section to the chief officer of the law enforcement agency.

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 28

Part 4 – Compliance and Monitoring

- (2) The report must include the following details:
- (a) the dates and times when the authorised operation began and was completed;
 - (b) the nature of the controlled conduct engaged in for the purposes of the operation;
 - (c) details of the outcome of the operation;
 - (d) if the operation involved illicit goods, a statement (to the extent known) of –
 - (i) the nature and quantity of the illicit goods; and
 - (ii) the route through which the illicit goods passed in the course of the operation;
 - (e) details of any loss of or serious damage to property, or any personal injuries, occurring in the course of or as a direct result of the operation.

28. Chief officers' annual reports

- (1) As soon as practicable after 30 July in each year, the chief officer of each law enforcement agency must submit a report to the Minister and the Minister administering the *Police Service Act 2003* setting out the details required by subsection (2) in relation to controlled operations conducted on behalf of the agency during the previous financial year.

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 4 – Compliance and Monitoring

s. 28

- (2) The report must include the following details:
- (a) the number of formal authorities that have been granted or varied by the chief officer, and the number of formal applications for the granting or variation of authorities that have been refused by the chief officer, during the period to which the report relates;
 - (b) the number of urgent authorities or urgent variations of authorities that have been granted by the chief officer, and the number of urgent applications for authorities or urgent variations of authorities that have been refused by the chief officer, during the period to which the report relates;
 - (c) the nature of the criminal activities against which the authorised operations were directed;
 - (d) the nature of the controlled conduct engaged in for the purposes of the authorised operations;
 - (e) if any of the authorised operations involved illicit goods, a statement (to the extent known) of –
 - (i) the nature and quantity of the illicit goods; and
 - (ii) the route through which the illicit goods passed in the course of the operations;

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 28

Part 4 – Compliance and Monitoring

- (f) details of any loss of or serious damage to property, or any personal injuries, occurring in the course of or as a direct result of the authorised operations;
 - (g) the number of authorities cancelled by the chief officer or that have expired during the period to which the report relates;
 - (h) any seizure, arrest and prosecution arising from the authorised operations.
- (3) Either Minister may require the chief officer to furnish additional information in relation to any authorised operation to which a report relates.
 - (4) The details mentioned in subsection (2) must be classified into controlled operations conducted in this jurisdiction, in this and one or more other jurisdictions or in one or more participating jurisdictions.
 - (5) The report must not disclose any information that identifies any suspect or a participant in an authorised operation or that is likely to lead to such a person or participant being identified.
 - (6) Nothing in this section requires particulars of an authorised operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.
 - (7) The chief officer must advise the Minister of any information in the report that, in the chief

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 4 – Compliance and Monitoring

s. 29

officer's opinion, should be excluded from the report before the report is laid before each House of Parliament because the information, if made public, could reasonably be expected to –

- (a) endanger a person's safety; or
 - (b) prejudice an investigation or prosecution; or
 - (c) compromise any law enforcement agency's operational activities or methodologies.
- (8) The Minister must exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (7).
- (9) The Minister is to cause a copy of the report to be laid before each House of Parliament within 15 sitting-days from the day on which the report is received by the Minister.

29. Keeping documents connected with authorised operations

The chief officer of a law enforcement agency must cause the following to be kept:

- (a) each formal application made by a law enforcement officer of the agency;
- (b) each formal authority granted to a law enforcement officer of the agency;

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 30

Part 4 – Compliance and Monitoring

- (c) each formal variation application made by a law enforcement officer of the agency;
- (d) each formal variation of authority granted to a law enforcement officer of the agency;
- (e) each order cancelling an authority granted to a law enforcement officer of the agency;
- (f) each report of a principal law enforcement officer of the agency under section 24(1) or section 27.

30. General register

- (1) The chief officer of a law enforcement agency must cause a general register to be kept.
- (2) The general register is to specify –
 - (a) for each application under this Act made by a law enforcement officer of the agency (including an application for variation of authority) –
 - (i) the date of the application; and
 - (ii) whether the application was formal or urgent; and
 - (iii) whether the application was made for a controlled operation conducted in this jurisdiction or

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 4 – Compliance and Monitoring

s. 30

- conducted in this jurisdiction and a participating jurisdiction; and
- (iv) whether the application was granted, refused or withdrawn; and
 - (v) if the application was refused or withdrawn, the date and time of the refusal or withdrawal; and
 - (vi) if the authority was varied, the date and time of the variation; and
- (b) for each authority under this Act granted to a law enforcement officer of the agency –
- (i) the date and time when the authority was granted; and
 - (ii) whether the authority was formal or urgent; and
 - (iii) whether the application was made for a controlled operation conducted in this jurisdiction or conducted in this jurisdiction and a participating jurisdiction; and
 - (iv) the name, and rank or position, of the person who granted the authority; and
 - (v) each relevant offence in respect of which controlled conduct

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 30

Part 4 – Compliance and Monitoring

- under the authority was to be engaged in; and
- (vi) the period of validity of the authority; and
 - (vii) if the authority was cancelled, the date and time of cancellation; and
 - (viii) the date and time when the authorised operation began and the date of completion of the operation; and
 - (ix) the date on which the principal law enforcement officer for the operation made a report on the operation under section 27; and
 - (x) if the authorised operation involved illicit goods, to the extent known –
 - (A) the nature and quantity of the illicit goods; and
 - (B) the route through which the illicit goods passed in the course of the operation; and
 - (xi) details of any loss of or serious damage to property, or any personal injuries, occurring in the course of or as a direct result of the operation; and

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 4 – Compliance and Monitoring

s. 31

- (c) for each variation of authority under this Act –
 - (i) the date and time when the variation was made; and
 - (ii) whether the variation was formal or urgent; and
 - (iii) the name, and rank or position, of the person who made the variation.

Division 3 – Inspections

31. Inspection entity

The Minister is to appoint a person as the inspection entity for the purposes of this Division.

32. Inspection of records by inspection entity

- (1) The inspection entity must, from time to time and at least once every 12 months, inspect the records of a law enforcement agency to determine the extent of compliance with this Act by the agency and law enforcement officers of the agency.
- (2) For the purpose of an inspection under this section, the inspection entity –
 - (a) after notifying the chief officer of the law enforcement agency, may enter at any

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 32

Part 4 – Compliance and Monitoring

- reasonable time premises occupied by the agency; and
- (b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and
 - (c) may require a member of staff of the agency to give the inspection entity any information that the inspection entity considers necessary, being information that is in the member's possession, or to which the member has access, and that is relevant to the inspection.
- (3) The chief officer must ensure that members of staff of the agency give the inspection entity any assistance the inspection entity reasonably requires to enable the inspection entity to perform or exercise functions under this section.
 - (4) The inspection entity must make a written report to the Minister and the Minister administering the *Police Service Act 2003* by not later than 31 July in each year on the results of each inspection under this section in the preceding financial year.
 - (5) The report referred to in subsection (4) is to include a report on the comprehensiveness and adequacy of the records of the agency and the cooperation given by the agency in facilitating the inspection by the inspection entity of those records.

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 4 – Compliance and Monitoring

s. 32

- (6) The Minister is to cause a copy of the report to be laid before each House of Parliament within 15 sitting-days from the day on which the report is received by the Minister.

PART 5 – MISCELLANEOUS

33. Evidence of authorities

- (1) A document purporting to be an authority granted under section 10 –
 - (a) is admissible in any legal proceedings; and
 - (b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person granting the authority was satisfied of the facts of which he or she was required to be satisfied before granting the authority.
- (2) A document purporting to be an authority within the meaning of a corresponding law granted under a provision of the corresponding law that corresponds to section 10 –
 - (a) is admissible in any legal proceedings in this jurisdiction; and
 - (b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person who granted the authority was satisfied of the facts of which he or she was required to be

satisfied under the corresponding law before granting the authority.

34. Delegation

- (1) Except as provided by this section (and despite any other Act or law to the contrary) the functions of a chief officer under this Act may not be delegated to any other person.
- (2) A chief officer may delegate to a senior officer of the law enforcement agency any of the chief officer's functions under this Act relating to the authorisation of controlled operations (including the variation and cancellation of controlled operations and notifications under section 24(2)).
- (3) In this section –

“senior officer” means a person for the time being holding office as –

- (a) in relation to the Police Service, any of the following:
 - (i) the Deputy Commissioner of Police;
 - (ii) an Assistant Commissioner of Police; or
- (b) in relation to the Australian Crime Commission, any of the following:

Police Powers (Controlled Operations) Act 2006
Act No. of

s. 35

Part 5 – Miscellaneous

- (i) the Director National Operations;
- (ii) a Director;
- (iii) an office of the Australian Crime Commission that is prescribed by the regulations.

35. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

36. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Workplace Relations; and

Police Powers (Controlled Operations) Act 2006
Act No. of

Part 5 – Miscellaneous

s. 36

- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.